IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 6899 OF 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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M/S. HITESH INDUSTRIES & ANR. - Petitioner(s)

Versus

REGIONAL PROVIDENT COMMISSIONER (II) - Respondent(s)

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Appearance :
Shri R. D. Dave for Petitioner(s) : 1 - 2.
Shri P. J. Mehta for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 24/07/2007

ORAL JUDGMENT

The petitioners, being aggrieved by the order (Annexure-B) passed by the Regional Provident Fund Commissioner-II, preferred an

appeal, but, after dismissal of the same, they are before this Court with a submission that the authorities were absolutely unjustified in holding that petitioner No.1-Establishment was having more than 20 employees, therefore, the provisions of the Employee's Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter referred to as “the Act” for short) would apply.

2. Shri R.D. Dave, learned Counsel for the petitioners, after taking me through the records, submitted that the documents, on the basis of which the action was proposed against the petitioners, were not supplied to the petitioners, therefore, the orders passed by the authorities deserve to be quashed.

3. Shri P. J. Mehta, learned Counsel for the respondent, after taking me through paragraph-4 of the counter-affidavit dated 27th June, 2001 filed by Shri Alkesh Harilal Jotani, Assistant Provident Fund Commissioner, submitted that on 7th February, 1997, the said documents were sent to the petitioners, therefore, the petitioners' submission is wrong.

4. As a counter-blast, Shri Dave, after taking me through the counter affidavit of the respondent, which was filed before the

Employee's Provident Fund Appellate Tribunal, submitted that in paragraph 6(A-IV), it was clearly stated by the Department that the appellant (present petitioner) during the inquiry held under Section 7-A of the Act did not ask for the documents, report/information, on the basis of which the department had issued the draft letter to the appellant. He submitted that if this was the stand of the Department in the year 1999, then, the letter dated 7th February, 1997, on which reliance is sought to be placed before this Court, must be held to be manufactured, concocted and forged letter.

5. Shri Mehta finding difficulty in reconciling two stands taken by the two Assistant Provident Fund Commissioners, submitted that the orders passed by the Appellate Authority and the Commissioner of Provident Fund be set aside and the matter be remanded back to the Commissioner of Provident Fund for making an inquiry in accordance with law. He submits that the parties be directed to appear before the said officer and on a written application, all the documents, to be demanded by the petitioners, would be supplied to them.

6. In view of the fair concession made by Shri Mehta, the orders passed by the Appellate Authority and the Commissioner of Provident Fund are set aside. The petitioners shall appear before the

Commissioner of Provident Fund on 30th August, 2007. On the same day, the petitioners may make an application for demand of the documents. After the documents are supplied to them, they would be given an opportunity to file further reply. If the petitioners submit to the Commissioner of the Provident Fund that in the inquiry to be held under Section 7-A of the Act, they want to lead some oral evidence or produce documentary evidence, then, such opportunity shall be provided to them. After hearing the parties, the Commissioner of Provident Fund shall decide the matter in accordance with law.

7. The petition to the extent indicated above is allowed. Rule is made absolute. No costs.

[R.S.Garg, J.]

*kamlesh**